

1 HONORABLE RICHARD A. JONES  
2  
3  
4  
5  
6

7 UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

8 HENRY A. UMOUYO,

9 Plaintiff,

10 v.

11 BANK OF AMERICA, N.A.;  
12 CARRINGTON MORTGAGE SERVICES,  
LLC; AND ANY UNKNOWN HEIRS,  
13 DEVISEES, GRANTEEES, CREDITORS,  
AND OTHER UNKNOWN PERSONS OR  
14 UNKNOWN SPOUSES CLAIMING BY,  
THROUGH AND UNDER BANK OF  
15 AMERICA, N.A.,

16 Defendants.

17 Case No. 2:16-CV-01576-RAJ

18 ORDER

19 This matter comes before the Court on Plaintiff's motion for summary judgment.

20 Dkt. # 22. Defendant Carrington Mortgage LLC ("Carrington") opposes the motion.

21 Dkt. # 25. For the reasons below, the Court **TERMINATES** Plaintiff's motion and  
allows him to refile after he properly serves Bank of America, N.A. ("BANA").

22 Before the Court can rule on the merits of Plaintiff's motion for summary  
judgment, it must address the issue of service. Carrington has maintained throughout the  
23 litigation that Plaintiff never properly served BANA. BANA has not appeared in this  
24 matter.

25 The issue of service arose in Carrington's opposition to Plaintiff's motion to  
remand. Dkt. ## 10, 11. In its response, Carrington argued that it did not need BANA's  
26  
27  
28 ORDER – 1

1 consent to remove the matter because BANA was never properly served with the  
2 summons and complaint. Dkt. # 11 at 1. But even if service was proper, Carrington  
3 argued that BANA, “who is also represented by the below-signed counsel for Carrington,  
4 properly consented to removal.” *Id.* at 2. The Court relied on this assertion when it  
5 denied Plaintiff’s motion to remand. Dkt. # 17 at 5.

6 On May 2, 2017, the Court ordered Plaintiff to show cause why BANA should not  
7 be dismissed due to improper service. Plaintiff maintained that he properly served  
8 BANA. Plaintiff attached documents showing that he served BANA and Carrington the  
9 same way—through priority mail. Dkt. ## 21-1, 21-2, 21-3. Plaintiff stated that he also  
10 instructed Carrington to deliver the summons and complaint to BANA. Dkt. # 21 at 3.  
11 Plaintiff argued that Carrington is BANA’s agent, and therefore service was proper under  
12 Federal Rule 4(h)(1)(B). *Id.* at 3.

13 Under the Federal Rules, Plaintiff has not properly served BANA. Plaintiff  
14 conflated Carrington’s position as a loan servicer with BANA’s registered agent for  
15 service of process. These entities are not the same, and Plaintiff cannot show that  
16 Carrington has been authorized to accept service of behalf of BANA.

17 Carrington’s counsel represented that it also represents BANA. However, “[f]or  
18 an attorney to be considered an agent for process, he or she must have been appointed for  
19 that precise task.” *Ellis v. Johnston*, No. CV07-508-PHX-MHM, 2008 WL 508642, at \*1  
20 (D. Ariz. Feb. 21, 2008). Plaintiff has not shown that Carrington’s counsel has been  
21 authorized to accept service on behalf of BANA.

22 Therefore, to preserve the record, the Court ORDERS Plaintiff to properly serve  
23 BANA within thirty (30) days from the date of this Order.<sup>1</sup> If Plaintiff chooses to serve  
24 BANA pursuant to Federal Rule 4(h)(1)(B), he is reminded that priority mail is not

---

25  
26 <sup>1</sup> The Court encourages Plaintiff to review Federal Rule 4 as well as this district’s pro se manual,  
27 which can be found at:  
<http://www.wawd.uscourts.gov/sites/wawd/files/ProSeGuidetoFilingYourLawsuitinFederalCourt.pdf>.

sufficient.<sup>2</sup>

The Court is weary of counsel for Carrington's representations to the Court and to Plaintiff. It is not hard to understand how these representations led pro se Plaintiff astray, and how these representations have potentially derailed litigation and wasted judicial resources. Carrington's counsel has admitted that it also represents BANA. In light of this representation—and considering the eventuality of service in this matter—the parties may contemplate agreeing to service and filing a stipulation with the Court.

For the foregoing reasons, the Court **TERMINATES** the pending motion for summary judgment, which Plaintiff may refile after he properly serves BANA. Dkt. # 22. The Court **ORDERS** Plaintiff to serve BANA within thirty (30) days from the date of this order pursuant to Federal Rule 4(h). Alternatively, the parties may stipulate to service and file such a stipulation with the Court.

Dated this 25th day of January, 2018.

Richard D. Jones

The Honorable Richard A. Jones  
United States District Judge

<sup>2</sup> Plaintiff cites *Jones v. Stebbins*, 122 Wash. 2d 471 (1993), for the proposition that “service by mail has the same effect as service by publication.” See Dkt. # 28 at 4. However, Plaintiff misses a key portion of *Jones* in which the court explained that service by mail is only appropriate by court order. See *Jones*, 122 Wash. 2d at 475 (A court will issue an order allowing service by mail when there are ‘circumstances justifying service by publication’ and if the serving party demonstrates, by affidavit, facts which show that service by mail is just as likely to give actual notice as service by publication.”) (citing Wash. Super. Ct. Civ. R. 4).